

**IN THE FEDERAL SHARIAT COURT**  
**(Appellate Jurisdiction)**

**PRESENT:**

**MR. JUSTICE SHAHZADO SHAIKH, ACTING CHIEF JUSTICE**  
**MR. JUSTICE MUHAMMAD JEHANGIR ARSHAD**

**CRIMINAL APPEAL NO.59/L OF 2010**

Mst. Sonia Naz wife of Asim Yusaf, Appellant  
resident of Block H/2, Johar Town,  
Lahore.

Versus

1. Abdullah Khalid (S.P) son of Muhammad Saeed Respondents  
caste Jat Warrach,  
resident of 93/EXT Cavalry Ground,  
Lahore Cantt.
2. Jamshed Iqbal Chishti (Inspector of Police),  
son of Ghulam Akbar Chishti,  
resident of Machhiwal,  
Tehsil and District, Jhang.
3. The State.

Counsel for the appellant : Mr. Zulfiqar Ahmed Bhutta,  
Advocate.

Counsel for the respondents : Mr. Ahmed Awais, Advocate for  
respondent Jamshed Iqbal Chishti and  
Ch. Riyasat Ali, Advocate for  
respondent Abdullah Khalid.

Counsel for the State : Ch. Muhammad Sarwar Sidhu,  
Additional Prosecutor General Punjab  
for State.

FIR No. and date : 650 of 2005 dated 12.10.2005,  
P.S. Sattokatla, District, Lahore.

Date of impugned Judgment of Trial Court : 12.04.2007

Date of Institution of appeal in FSC : 07.05.2010

Date of hearing : 28.11.2012

Date of Judgment : 28.11.2012

**JUDGMENT**

**Muhammad Jehangir Arshad, Judge.-** This appeal filed by Mst. Sonia Naz is directed against the judgment dated 12.04.2007, handed down by the learned Additional Sessions Judge, Lahore, whereby the learned trial Court acquitted respondents Abdullah Khalid (S.P) son of Muhammad Saeed and Jamshed Iqbal Chishti (Inspector of Police) son of Ghulam Akbar Chishti in case FIR No.650 of 2005 dated 12.10.2005, P.S. Sattokatla, District Lahore from the charge under sections 10/11 and 16/18 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with sections 344/506 and 354/355 PPC and section 155 of Police Order, 2002, while exercising the powers under section 265-K Cr.P.C.

2. Brief facts of the case as set out in the FIR No.650 of 2005 dated 12.10.2005, P.S. Sattokatla, District Lahore, upon the complaint/report (Ex.PC) of Mst. Sonia Naz, wherein she stated that on 03.05.2005, she came out of her residence in H-2, Block Johar



Town at 5/6 P.M. when four persons boarding on a car forcibly put her into their vehicle and one of them put a revolver near her chest and brought her to an unpopulated place where they put black colour cloth around and also black spectacles on her eyes and they remained roaming her in the said car and thereafter took her into a house where about 10 persons were already present and there she was confined. It was further alleged that the persons present there also made her to talk with S.P. Abdullah Khalid accused on a mobile phone and that she made a request for her release but of no vain. It is further alleged that during the night time S.P Abdullah Khalid got her awakened and expressed his anger on filing of her writ petition and that he tried to commit zina with her and also torn out her clothes and when he failed his two other accomplices opened her mouth wherein Abdullah Khalid urinated and then he summoned Jamshed Iqbal Chishti who was wearing a T.Shirt of Hangtang who committed zina-bil-jabr with her for seven minutes and thereafter



she was confined in the room for 10/12 days and was ultimately left at Thokhar Niaz Baig. The motive behind the occurrence is stated to be filing of writ petition by the complainant against the accused.

3. The case was duly investigated; the respondents were arrested and statements of the PWs were recorded under section 161 Cr.P.C. After completion of investigation, challan was submitted in the trial Court against the accused/respondents, under section 173 of the Code of Criminal Procedure.

4. The learned trial Court on receipt of challan framed the following charge against all the accused on 11.03.2006:-

- 1. Abdullah Khalid (S.P) son of Muhammad Saeed, caste Jat Warraich, resident of 93-Ext, Cavalry Ground Lahore Cantt, Lahore.**
- 2. Jamshed Iqbal Chishti (Inspector of Police) son of Ghulam Akbar Chishti, resident of Machhiwal Tehsil & District Jhang.**

***As follows:-***

***"First that on 12.10.2005 in the area of Block-H-II, Jauhar Town, Lahore, within the jurisdiction of Police Station, Sattokatla, Lahore, at about 05.00/06.00 p.m. you the above named accused got abducted Mst. Sonia Naz through four***

*unknown persons through Cuore car for the purpose of commission of zina which is an offence punishable under section 16 of Offence of Zina (Enforcement of Hudood) Ordinance No.VII of 1979 and which is within the cognizance of this Court.*

*Second, that after 5/6 days subsequent to the date of abduction of Mst. Sonia Naz you Abdullah Khalid accused attempted to commit zina with Mst. Sonia Naz in the night time at the place of her illegal confinement and thus committed the offence punishable under section 18 of the Offence of Zina (Enforcement of Hudood) Ordinance No.VII of 1979 and thereafter you Jamshed Iqbal Chishti accused at the said time and place committed zina-bil-jabr with Mst. Sonia Naz and thus committed the offence, which is punishable under section 10 (3) of the Offence of Zina (Enforcement of Hudood) Ordinance No.VII of 1979, which is within the cognizance of this Court.*

*Third, that you the accused named above at the above said place of illegal confinement of Mst. Sonia Naz outraged her modesty by making water into her mouth by accused Abdullah Khalid 5/6 days later to her alleged abduction and thus committed the offence punishable under sections 354/355 of PPC, which is within the cognizance of this Court.*

*Fourth, that you the accused named above also extended threats to Mst. Sonia Naz during*

***her illegal confinement and thus committed the offence punishable under section 506 of PPC and due to the alleged commission of offences being police officers, you also misconducted during active police service and committed offence punishable under section 155 of Police Order 2002, which is within the cognizance of this Court.***

***And I hereby direct you all the above named accused persons to be tried by me for the aforesaid charge”.***

The accused persons did not plead guilty and claimed trial.

5. It would not be out of place to mention here that when 11 (eleven) prosecution witnesses had been examined and document Ex.PC to PZ were also produced in evidence and only the statement of complainant/appellant Mst. Sonia Naz was to be recorded, the respondents/accused filed an application under section 265-K Cr.P.C for their acquittal and the learned trial Court while accepting the said application acquitted both the accused/respondents No.1-2 vide judgment dated 12.04.2007.

Hence this appeal.

6. Mr. Zulfiqar Ahmed Bhutta, learned counsel for the appellant Sonia Naz appearing for the appellant has formulated the following points in support of this appeal:-

- i. The accused persons are police officers, who used their influence in such a manner that the appearance of the complainant/appellant before the learned trial court for recording her statement became impossible.
- ii. Para 17 of impugned judgment of learned trial Court clearly reflects that the case has been decided on presumption and not on merits causing miscarriage of justice to the appellant.
- iii. Learned counsel for appellant/Mst. Sonia Naz further argued that there was mis-reading and non-reading of evidence and the accused were

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acquitted without recording the statement of victim/appellant without any reason.

- iv. The Court did not record a final verdict that even if she had appeared, the same would not have affected the findings of acquittal.

7. Mr. Ahmed Awais, Advocate for respondent Jamshed Iqbal Chishti and Ch. Riyasat Ali, Advocate for respondent Abdullah Khalid raised the following points:-

- i. The delay in filing the appeal was condoned without Notice or hearing the respondents which was against the principles of natural justice.
- ii. Non-appearance of the victim Mst. Sonia Naz before the learned trial Court was deliberate to defeat the process of justice and to delay the final decision.





- iii. The Court cannot be made captive by the complainant.
- iv. So far as the Shalwar of Mst. Sonia Naz is concerned, it was washed out, when sent to chemical examiner, hence, the same was without legal significance.
- v. PW.7 Tariq Saleem Dogar, DIG, PW.9 Zafar Ahmed Qureshi, DIG and PW.10 Muhammad Aslam Tareen, DIG has conducted investigation and their findings regarding guilt of respondents were vague and not clear.
- vi. The learned trial Court was justified to make the observation that even if the victim appeared before the Court there was no probability of conviction of the accused.



- vii. Father-in-law of victim Mst. Sonia Naz has appeared as PW.11 and his mother-in-law was given up and this fact also shows that she had intentionally and deliberately not appeared before the Court on her own choice.
- viii. There is no incriminating evidence against the accused and there is no probability of conviction.
- ix. The judgment passed by the learned trial Court is based on material record and well reasoning.
- x. There is no question of misreading and non-reading of evidence.
- xi. Since she has not appeared of her own choice and further the appeal was filed after a lot of delay, the remanding of the case will give her a premium for the intentional delay by defeating the justice.



8. On the other hand, Additional Prosecutor General for

State comes out with the following submissions:-

- i. The judgment of the learned trial Court is based on surmises and conjectures.
- ii. The statement of the victim Mst. Sonia Naz was not recorded without any justification, so the probability of acquittal of respondents could not be inferred in the absence of her statement.
- iii. There is mis-reading of evidence regarding delay in FIR and medico legal report.
- iv. This case has peculiar circumstances and it should have been decided in its peculiar circumstances.
- v. The shalwar of victim was stained with semen as per report of chemical examiner, there was much probability of corroboration of the statement of the



victim with this incriminating evidence, if her statement had been recorded.

vi. The impugned judgment has been passed in haste.

9. We have considered the above noted arguments of the learned Counsel for the parties at length and have also perused the record as well as the impugned judgment.

10. Before proceeding further, we deem it appropriate to reproduce below para 17 of the impugned judgment for facility of reference:-

***"17. For all above reasons the prosecution cannot improve the fate of case for the conviction of these accused for the offences charged against them on 11.03.2006, even if Sonia Naz complainant is produced by the prosecution and her statement is accepted by the Court, as the same would not be corroborated by any other prosecution evidence which is already on record. Therefore, when all the prosecution evidence available on record is not likely to prove the charges against the accused and the solitary***



***statement of the complainant is absolutely insufficient for recording the conviction of the accused, the application moved on behalf of the complainant for sina die adjournment of this case cannot be accepted as there is no likelihood of conviction of both these accused for all the offences under sections 10, 16 and 18 of the Offence of Zina (Enforcement of Hudood) Ord. VII of 1979 and sections 354, 355 and 506 of PPC and section 155 of Police Order 2002. The applications moved by the accused Abdullah Khalid and Jamshed Iqbal Chishti are accepted and they are acquitted of the charge for the above said offences and the applications moved by Mr. Naveed Inayat Malik, Adv. learned counsel for the complainant for sina die adjournment of the case is hereby dismissed. The accused are on bail. Their sureties are hereby relived from their liabilities. The case properly be destroyed after the period of appeal or revision, if any. File be consigned to the record room after completion."***

11. It is settled principle of law that trial Court has ample power to acquit the accused to prevent the rigours of a prolonged trial when it is apparent from the record that there is no probability of the accused being convicted of the charge leveled against them. But the complainant equally deserves justice and fair treatment in

this regard. In this case the investigation officer gave his clear finding during the course of his investigation **"there was some probability that accused had committed the crime"**. Shalwar of victim Mst. Sonia Naz was found stained with semen as per report of chemical examiner. In such situation, the statement of victim was necessary as it is well settled principle of law that even the sole testimony of the victim was enough for conviction, if it was corroborated, truthful and confidence inspiring, as also held in **PLD 2012 FSC P.1**. However, in this case the learned trial Court before examining the victim acquitted the respondents on the basis of application submitted under section 265-K of Code of Criminal Procedure which cannot be approved with legal sanctity.

12. It was also contended that appeal was filed with inordinate delay, and the delay in filing the appeal was condoned without Notice or hearing the respondents which was against the principles of natural justice. No doubt, there is, 1058 days delay in

filing the appeal but the same is properly explained by the appellant/complainant in her application submitted before this Court i.e. Criminal Misc. Application No.66/L of 2010.

13. According to the contents of the said application **"as the appellant apprehended danger to her life at the hands of accused/respondents who were police officers, therefore, she had no alternate but to go in hide and in this way she had lost her contact with her family and it was just about 21.04.2010 when she got the knowledge of impugned judgment and on getting knowledge she immediately filed appeal without any delay"**. We have gone through the contents of the above noted application and also the order of this Court dated 05.06.2012 by which the delay in filing the appeal was condoned. No doubt the said order was passed in the absence and of the respondents, yet the fact remained that the respondents despite their appearance in the Court on 04.07.2012, 06.11.2012



and 21.11.2012 did not challenge the said order and thus impliedly accepted the order dated 05.06.2012 condoning the delay; even otherwise we are satisfied that as the learned trial Court acted in unnecessary haste while deciding the matter in the absence and without recording the statement of the appellant/complainant and the appellant having satisfactorily explained her absence as well as non-availability before the learned trial Court for non-recording<sup>of</sup> her statement, therefore, the delay in filing the appeal by the appellant was justified and the same was rightly condoned by this Court on 05.06.2012.

14. While proceeding under section 265-K of Code of Criminal Procedure, the learned trial Court was under obligations to record reason, **"that in all probability the verdict of guilt would not be returned and further that it should not be done by depriving either the prosecution or the defence of its right to produce necessary evidence"**. It is also settled



principle of law that neither the prosecution nor the defence should be deprived of producing its evidence merely because according to the Court either the said evidence was not necessary/sufficient or not required by the Court for recording the verdict of acquittal. In this respect **2005 SCMR 1544 and 1998 P. Cr. L. J 1563 (FSC)** may be referred to with advantage.

15. We have gone through the entire record of the learned trial Court and we feel that in view of the allegation of the appellant that she was subjected to zina by the respondents and further the availability of her shalwar stained with semen as verified by the office of chemical examiner, the recording of statement of appellant was not only essential but also expedient in the interest of justice and the learned trial Court acted in unnecessary haste as well as with material irregularity by acquitting the accused/respondents, simply on the basis of contents of application submitted by them under section 265-K of Code of Criminal Procedure.



16. It is, further observed that in view of the proposed judgment, we have intentionally avoided dilating upon the above noted respective contention of learned counsel for the parties on merits lest it may prejudice the case of any party before the learned trial Court, however, the above noted contention of the learned counsel for the parties shall remain open and the parties would be at liberty to re-agitate the same before the learned trial Court at an appropriate stage.

17. The upshot of above discussion is that the impugned judgment of the learned Additional Sessions Judge, Lahore passed in Hudood Case No.01 of 2006, whereby the respondents were acquitted, under section 265-K Cr.P.C is hereby set aside and the Criminal Appeal No.59/L of 2005 filed by the appellant/complainant is accepted. Consequently, the matter is sent back to the learned trial Court in terms of section 428 Cr.P.C with the direction to decide the same afresh after recording statement of appellant/complainant



Mst. Sonia Naz and the other necessary evidence which the prosecution deems necessary to produce, however, after affording ample opportunity of defence to the accused/respondents.

18. The parties are directed to appear before the learned District & Sessions Judge, Lahore on 10.12.2012 and the learned District & Sessions Judge would be at liberty either to retain the case on his own file or entrust the same to some other Court of competent jurisdiction. It is further directed that the learned trial Court shall ensure the expeditious disposal of case within four months from the date of receipt of this order with compliance report to Registrar of this Court.

  
**JUSTICE MUHAMMAD JEHangIR ARSHAD**

  
**JUSTICE SHANZADO SHAIKH  
ACTING CHIEF JUSTICE**

*Announced at Islamabad  
On 28.11.2012  
Hummayun/-*

*Approved for reporting.*

  
**JUSTICE MUHAMMAD JEHangIR ARSHAD**